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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,016	12/13/2001	Timothy Frederick Thomas	LL-111-R &D	2794

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EXAMINER

PICKETT, JOHN G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 06/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

7.K

Office Action Summary	Application No.		Applicant(s)	
	10/022,016		THOMAS ET AL.	
	Examiner		Art Unit	
	Gregory Pickett		3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: On page 11, line 27, "or are films may be made..." is grammatically incorrect.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
2. Claims 1-4, 6, 10, 13, 19-24, 26, 27, 30, 33, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clemens (US 3,007,623) in view of Bray et al (US 6,164,444).

Regarding claim 1, Clemens discloses a package for articles (78) with a container body (72) comprising body panels (44) and a separation member (Figure 6, 70) dividing the container into first and second compartments, each compartment having an opening defined by an edge (as shown, Figure 5), and first (Figure 6, 74) and second (Figure 6, 76) lids.

Clemens does not disclose a first and second sealing layers removably affixed to the edges for sealing the container body.

Bray et al discloses a sealing layer (7) removably affixed to the edges for sealing the container body. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package of Clemens with a sealing layer over each opening as taught by Bray et al in order to ensure the freshness of the contents.

As to claim 2, the package of Clemens-Bray discloses cigarettes as the contents with the separate compartments containing separate brands (Clemens, Col. 1, ll. 9-20).

As to claims 3 and 4, the package of Clemens-Bray discloses a sealing layer of low permeability sheet material adhesively affixed to the first and second edges of the container (for example, Bray, Col. 1, ll. 64-67, and Abstract).

As to claim 6, the package of Clemens-Bray is shaped as claimed by the applicant (Clemens, Figure 6).

As to claim 10, the package of Clemens-Bray discloses lids attached by hinges (Clemens, Figure 6).

As to claim 12, the package of Clemens-Bray discloses lids attached by hinges on opposite sides of the container body and having a parallel axis (Clemens, Figure 6).

As to claim 13, the package of Clemens-Bray discloses lids and bodies having peripheral flanges and peripheral shoulders providing a smooth junction between the lids and the container body when closed (Clemens, Figures 5-6).

As to claims 19 and 20, the package of Clemens-Bray discloses a tab (Bray, 10).

As to claim 21, the package of Clemens-Bray does not expressly disclose an internal space at less than atmospheric pressure. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package with internal spaces at a pressure less than atmospheric since it was known in the art that sealing a container at less than atmospheric pressure extends the shelf life of the product.

Regarding claim 22, Clemens discloses a container (78) with a generally rectangular body having an internal space for containing cigarettes and a front, back, two side panels, a separation member dividing the container into two compartments with a perimetrical edge defining openings; a plurality of cigarettes of a first and second brand (Col. 1, ll. 9-20); and a first (74) and second (76) lid attached on opposite panels (Figure 6).

Clemens does not disclose a first and second sealing layers removably affixed to the edges for sealing the container body.

Bray et al discloses a sealing layer (7) removably affixed to the edges for sealing the container body. It would have been obvious to one of ordinary skill in the art at the

time the invention was made to provide the package of Clemens with a sealing layer over each opening as taught by Bray et al in order to ensure the freshness of the contents.

Regarding claim 23, the container of Clemens-Bray is made of a material having a low permeability (Clemens, Col 1, ll. 64-72).

As to claim 24, the container of Clemens-Bray does not expressly disclose an internal space at less than atmospheric pressure. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container with internal spaces at a pressure less than atmospheric since it was known in the art that sealing a container at less than atmospheric pressure extends the shelf life of the product.

As to claims 26 and 27, the container of Clemens-Bray discloses the claimed invention except for the polymeric material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Clemens-Bray with the claimed polymeric material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

As to claim 30, the container of Clemens-Bray discloses lids and bodies having peripheral flanges and peripheral shoulders providing a smooth junction between the lids and the container body when closed (Clemens, Figures 5-6).

As to claims 33 and 34, the container of Clemens-Bray discloses the claimed invention except for the metallic material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Clemens-Bray with the claimed metallic material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

3. Claims 25, 35, 36, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clemens in view of Bray et al as applied to claim 22 above, and further in view of Keaveney et al (US 5,938,018).

Regarding claim 25, the container of Clemens-Bray as applied to claim 22 discloses the claimed invention except for a flexible sheet hinge.

Keaveney et al discloses a cigarette container (10) with a flexible sheet hinge (18). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Clemens-Bray with a hinge of flexible sheet material as taught by Keaveney et al in order to allow for the removal of the lid. It has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

As to claim 35, the container of Clemens-Bray-Keaveney as applied to claim 25 above meets the claimed method by presentation.

As to claim 36, the container of Clemens-Bray-Keaveney does not expressly disclose an internal space at less than atmospheric pressure. It would have been

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obvious to one of ordinary skill in the art at the time the invention was made to provide the container with internal spaces at a pressure less than atmospheric since it was known in the art that sealing a container at less than atmospheric pressure extends the shelf life of the product.

As to claim 37, the container of Clemens-Bray-Keaveney does not expressly disclose insertion and affixing steps performed substantially simultaneously. It would have been obvious to one of ordinary skill in the art at the time the invention was made to perform the claimed steps simultaneously in order to reduce the steps required for fabrication. Performing similar fabrication steps simultaneously is rudimentary in nature and requires only routine skill in the art.

As to claim 38, the container of Clemens-Bray-Keaveney the claimed cigarette brand arrangement (Clemens, Col. 1, ll. 9-20).

4. Claims 1-7, 10, 15, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore (US 2,185,604) in view of Clemens and Allen et al (US 4,026,063).

Regarding claim 1, Moore discloses a package for articles with a container body (15) having body panels and a separation member (34) dividing the internal space into first and second compartments; sealing layer (35) and first lid (43). Moore teaches an elongated container. Moore does not disclose a second sealing layer and a second lid.

Clemens teaches that it is desirable to have a container with multiple brands of articles.

Allen et al teaches a dual elongated container with compartments on the top and bottom and dual lids.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the container of Moore with multiple compartments and lids as taught by Allen et al for the purpose of packaging multiple brands of articles.

As to claim 2, the package of Moore-Clemens-Allen discloses cigarettes as the contents with the separate compartments containing separate brands (Clemens, Col. 1, ll. 9-20).

As to claims 3 and 4, the package of Moore-Clemens-Allen discloses a sealing layer of low permeability sheet material adhesively affixed to the first and second edges of the container (for example, Bray, Col. 1, ll. 64-67, and Abstract).

As to claim 5, the package of Moore-Clemens-Allen discloses separation members (Moore, 34 and Allen, Figures 1 and 2).

As claim 6, the package of Moore-Clemens-Allen is shaped as claimed by the applicant (Moore, Figure 1).

As to claim 7, the package of Moore-Clemens-Allen discloses the claimed invention except for the integrally molded polymeric material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the provide the container of Moore-Clemens-Allen with the claimed polymeric material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. It would have further been obvious to one

of ordinary skill in the art at the time the invention was made to integrally mold the container since it has been held that forming in one piece that which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

As to claim 10, the package of Moore-Clemens-Allen discloses hinged lids (Moore, Figure 3).

As to claim 15, the package of Moore-Clemens-Allen as applied to claim 7 discloses except for the specific material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Moore-Clemens-Allen with the claimed material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

As to claims 19 and 20, the package of Moore-Clemens-Allen discloses a tab (Moore, 36).

5. Claims 8, 9, 17, 18, 22, 28, 29, 31, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore-Clemens-Allen as applied to claims 1 above, and further in view of Dula (US 1,253,219).

Regarding claim 8, the package of Moore-Clemens-Allen as applied to claim 1 above discloses the claimed invention except for the bottom protrusions.

Dula discloses a package for articles with bottom protrusions (12a) for preventing the articles from moving during transport. It would have been obvious to one of ordinary

skill in the art at the time the invention was made to provide the package of Moore-Clemens-Allen with protrusions as taught by Dula in order to prevent the articles from moving during transport.

As to claim 9, the package of Moore-Clemens-Allen-Dula as applied to claim 8 discloses semi-circular troughs.

As to claim 17, the package of Moore-Clemens-Allen-Dula discloses the claimed arrangement.

As to claim 18, the package of Moore-Clemens-Allen-Dula discloses a perforated line (Moore, 37).

As to claims 22, 28, 29, 31 and 32, the package of Moore-Clemens-Allen-Dula as applied to claim 8 above discloses the claimed arrangement.

6. Claims 11, 13, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore-Clemens-Allen as applied to claim 10 above, and further in view of Keaveney et al.

Regarding claim 11, the package of Moore-Clemens-Allen discloses the claimed invention except for the flexible sheet hinge.

Keaveney et al discloses a cigarette container (10) with a flexible sheet hinge (18). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Moore-Clemens-Allen with a hinge of flexible sheet material as taught by Keaveney et al in order to allow for the removal of the lid. It has been held that constructing a formerly integral structure in various

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elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

As to claim 13, the package of Moore-Clemens-Allen discloses the claimed invention except for the peripheral shoulders and flanges.

Keaveney et al discloses a cigarette container (10) with peripheral shoulders and flanges (as shown, Figure 5a). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package of Moore-Clemens-Allen with a shoulder and flange arrangement as taught by Keaveney et al in order to form a smooth outer surface.

As to claim 16, the package of Moore-Clemens-Allen-Keaveney discloses cut-outs (Allen, Figure 1).

7. Claims 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore-Clemens-Allen as applied to claim 1 above, and further in view of Cryder (US 1,577,566).

Regarding claim 12, the package of Moore-Clemens-Allen discloses the claimed invention except for expressly disclosing the hinge arrangement.

Cryder discloses a hinge arrangement for dual lid containers. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the container of Moore-Clemens-Allen with a lid arrangement as taught by Cryder in order to maintain the lid structure of Moore in a dual lid container.

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As to claim 14, the package of More-Clemens-Allen-Cryder discloses the claimed invention except for the material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the provide the container of Moore-Clemens-Allen-Cryder with the claimed material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 703-305-8321. The examiner can normally be reached on Mon-Fri, 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Gregory Pickett
Examiner
May 19, 2003


Mickey Yu
Supervisory Patent Examiner
Group 3700